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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1983

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MULTISTATE LEGAL STUDIES, INC.,

*Petitioner,*

VS.

DAVID L. LADD, REGISTER OF COPYRIGHTS; NA-  
TIONAL CONFERENCE OF BAR EXAMINERS; and  
EDUCATIONAL TESTING SERVICE,

*Respondents.*

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**REPLY BRIEF IN SUPPORT OF  
PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

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PAUL F. STACK  
STACK & FILPI  
Suite 411  
140 South Dearborn Street  
Chicago, Illinois 60603-5298  
(312) 782-0690

*Attorneys for Petitioner*

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**ARGUMENT**

In its Brief in Opposition to the Petition for Certiorari, the Register of Copyrights put forward the following statement as a ground for denying the Petition:

c. Contrary to petitioner's assertion (Pet. 11), the decision in this case effects no revolution in the law of intellectual property. The practical considerations that led to development of the secure test procedure do not have broad application. This case affords no reason for this Court to assume, as petitioner does, that the Register will abuse the authority granted him in 17 U. S. C. 408(c). (Brief of Fed. Resp. at 10).

On May 23, 1983, subsequent to the filing of the Petition for a Writ of Certiorari in the instant proceeding, the Register

of Copyrights published a "Notice of Inquiry Deposit of Computer Programs and Other Works Containing Trade Secrets," (48 Fed. Reg. 22951-54 (May 23, 1983)), the purpose of which is contained in a portion of the notice's summary:

Owners of copyright in works containing trade secrets, especially owners of copyright in computer programs, have expressed concern about public availability of materials deposited in the Copyright Office, and have asked that the Office consider the possibility of special deposit provisions. This notice is intended to elicit public comment, views, and information which will assist the Copyright Office in evaluating its present practices and in considering possible changes in its regulations. 48 Fed. Reg. at 22951.

Under the portion of the Notice Of Inquiry entitled "Some Policy Considerations", the Register states:

a. *General.* A number of requests for special relief from the deposit requirement, asking that various exceptions be made for computer programs and works containing trade secret material, caused us to institute this inquiry. Many requests asked for treatment similar to that now provided for "secure tests."

The secure test provision of the deposit regulations were sustained in a challenge in *National Conference of Bar Examiners and Educational Testing Service v. Multistate Legal Studies, Inc.*, 629 F.2d 478 (7th Cir. 1982), (petition for certiorari filed), a copyright and trademark infringement case in which the defendant asserted that either the regulations under which plaintiffs' claims to copyright were registered, § 202.20(c)(vi), were inconsistent with the Copyright act, or that the Act was unconstitutional. The Seventh Circuit held that the secure test regulation is authorized by 17 U.S.C. 408(c), that the regulation does not conflict with 17 U.S.C. 704(d), and that the regulation does not violate Article I, Section 8 of the Constitution.

Based on the *Multistate* decision, representations have been made to the Copyright Office that the Register has the necessary authority to promulgate regulations allowing

the deposit of identifying material for works containing trade secrets . . . The policy issues are important and may have profound significance for the system of copyright registration. 48 Fed. Reg. at 22952-3.

Petitioner agrees with the Register that the policy issues surrounding copyright registration of secret documents are indeed fraught with "profound significance" for the system of copyright registration. Since this case involves nothing less than the Register's statutory and constitutional authority to award federal copyright registration to secret works (most of which, as the Register admits, are unpublished, 48 Fed. Reg. at 22951), Petitioner does not believe it is overstating its case in asserting that the instant case raises one of the most important and fundamental copyright issues presented to this Court in the last 40 years.

## CONCLUSION

The Petition for a Writ of Certiorari should be granted and the decision of the United States Court of Appeals for the Seventh Circuit should be reviewed.

Respectfully submitted,

PAUL F. STACK  
STACK & FILPI  
Suite 411  
140 South Dearborn Street  
Chicago, Illinois 60603-5298  
(312) 782-0690